

J. PATRICK MURPHY, 4-7-08

2

A P P E A R A N C E S

FOR THE PLAINTIFF: MR. PAUL DeMURO 09:36
Attorney at Law
124 East 4th Street
Tulsa, OK 74103

FOR THE DEFENDANT: MR. PHIL R. RICHARDS 09:36
Attorney at Law
525 South Main
Suite 1200
Tulsa, OK 74103

09:36

09:36

09:36

**TULSA FREELANCE REPORTERS
918-587-2878**

1	I N D E X	
2		
3	W I T N E S S	P A G E
4		
5	J. PATRICK MURPHY	09:36
6	Direct Examination by Mr. Richards	4
7	Reporter's Certificate	215
8		
9		
10		09:36
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

J. PATRICK MURPHY, 4-7-08

28

1 Q So you were going to redo it, basically?

2 A Yes.

3 Q Do you remember what companies you've reviewed
4 loss prevention procedures and materials for?

5 A For litigation? 10:15

6 Q Any purpose. Well, it's all litigation, but
7 that one case, right, that one retention?

8 A Right.

9 Q Do you remember what companies the various
10 ones were? 10:15

11 A I have reviewed J.C. Penney's. I have
12 reviewed Academy Stores. I have reviewed Office
13 Max. Big 5 Sporting Goods is a current case that
14 I've just received some documents for. I believe
15 that's it. 10:16

16 Q All right. Now, which was the one on which
17 you were consulting rather than being involved in
18 litigation?

19 A Giant stores; I believe it is called Giant &
20 Eagle Grocery store chain up in the Maryland area. 10:16

21 Q So all of the others would then be litigation
22 related?

23 A Yes, sir.

24 Q And in any of these matters that were involved
25 in litigation, J.C. Penney, Academy, Office Max or 10:16

**TULSA FREELANCE REPORTERS
918-587-2878**

J. PATRICK MURPHY, 4-7-08

31

1 Q Oh, okay, so you're just now looking at it?

2 A Yes, sir.

3 Q With these five other companies, and are any
4 of these companies, in terms of their business, of
5 the magnitude that Target is? 10:20

6 A J.C. Penney's certainly is. The rest of them
7 are not.

8 Q Do the procedures, the loss prevention
9 procedures that you reviewed for these five
10 companies, are they similar to what you saw of 10:20
11 Target's in 2005 or are there marked differences in
12 them? Does it seem like these companies all sort of
13 have the same basic set of procedures or are they
14 just wildly different?

15 A There are some accepted best practices that 10:20
16 are in place across retail in general. It would be
17 difficult for me to characterize their full loss
18 prevention policies and procedures in total across
19 the board, but in the sense that they cover
20 generally the same types of scenario and material, 10:21
21 yes.

22 Q In terms of, say, the detention of a suspected
23 shoplifter, what are some of the best practices
24 across retail?

25 A The first tier, I would call it, of practices 10:21

**TULSA FREELANCE REPORTERS
918-587-2878**

J. PATRICK MURPHY, 4-7-08

55

1 accounting variances within the industry, but the
2 major components would be employee theft and
3 shoplifting.

4 Q Do you have any information on whether the
5 amount of merchandise lost by Target to shoplifters, 10:58
6 to external theft, is greater or lesser or about the
7 same as the industry average by percentage?

8 A I have no idea.

9 Q Okay. Do you have any information or any
10 measure as to the effectiveness of their loss 10:58
11 prevention program?

12 A Would you repeat the question for me?

13 Q Sure. Do you have any information as to how
14 effective Target's loss prevention program is in
15 relation to other retailers in the industry? 10:59

16 A No, sir.

17 Q Do you have any information as to how Target's
18 loss prevention program, in terms of processes and
19 procedures, compares to that, say, of Wal-Mart?

20 A No, sir. 10:59

21 Q Or Kmart?

22 A No, sir.

23 Q Do you know what Sears' practices and
24 procedures are currently?

25 A No, sir. 10:59

**TULSA FREELANCE REPORTERS
918-587-2878**

J. PATRICK MURPHY, 4-7-08

147

1 Q All right. And how many attempted detentions
2 were there among the CIRS reports that you reviewed?

3 A If you don't mind?

4 Q You bet.

5 A Also, just to make note, as I looked this 03:37
6 over, we don't have all the CIRS reports, so
7 anything I will tell you as far as compilation would
8 be at this point inaccurate.

9 Q Now, when you say you don't have all the CIRS
10 reports, what do you mean? 03:38

11 A Well, we're looking for, based on Stacie
12 Pavey's 2005 appraisal, his evaluation, it says that
13 he had 32 apprehensions for 2005. We don't -- I
14 don't have all of those reports. I have some
15 reports from 2005, but we're missing some. 03:38

16 Q All right. Now, I think you told me all of
17 the reports you have are unredacted, correct, they
18 don't have any blacked out lines?

19 A That's correct.

20 Q Now, of the information you've looked at, have 03:38
21 you analyzed any detentions other than those
22 attempted by Mr. Pavey?

23 A Yes.

24 Q Okay. And have you, as far as you know,
25 analyzed all of the detentions that occurred in the 03:38

**TULSA FREELANCE REPORTERS
918-587-2878**

J. PATRICK MURPHY, 4-7-08

148

1 time period that you looked at?

2 A I guess the better way to say it is I have
3 reviewed the documents that I do have, and those are
4 inclusive of any loss prevention personnel, to the
5 best of my knowledge, that worked at that store. 03:39

6 Q And what time period did that concern?

7 A I have shoplifting reports dating back to
8 March 11, 2003.

9 Q And how late do they go?

10 A August 4th, 2006. 03:39

11 Q And as far as you know, those are all of the
12 reports, incident reports or CIRS reports concerning
13 shoplifting during that period?

14 A I just want to make sure I answer the question
15 properly. It goes back, again, to the documents 03:39
16 that I have in my possession that that is what is
17 captured here on this compilation.

18 Q Okay. Let me clarify that. You told me that
19 you believe there may be some other reports from
20 2005 that you've not been provided with regarding 03:40
21 Pavey's shoplifting detentions; correct?

22 A Right.

23 Q Excepting those, is it your understanding that
24 the list of documents that you've analyzed in the
25 Target CIRS reports with Tulsa PD calls for service 03:40

**TULSA FREELANCE REPORTERS
918-587-2878**

J. PATRICK MURPHY, 4-7-08

149

1 spreadsheet constitutes all of the detentions at
2 Target during that time period?

3 A When I did the report, I thought that was the
4 case. I'm not sure at this point in time that I
5 have all the reports involving shoplifter 03:40
6 apprehensions or attempts at apprehensions for the
7 time period I have here, so I just don't know that I
8 have all of those yet.

9 Q Of the reports that you have looked at, and
10 were those reports provided to you? 03:41

11 A Yes.

12 Q You didn't select the reports to look at;
13 correct?

14 A That's correct.

15 Q All right. Of the reports that you've looked 03:41
16 at, have you been able to determine the incidents of
17 violent response to an attempted apprehension of
18 shoplifters?

19 A Yes, sir, I do not have that specific breakout
20 here; however, if you wanted me to, it would just be 03:41
21 a quick count to tell you which ones involve
22 resisting versus not.

23 Q Well, is that of significance to you in your
24 opinions?

25 A Yes, it is. 03:41

**TULSA FREELANCE REPORTERS
918-587-2878**

1 MR. DeMURO: Can we go off the record?

2 MR. RICHARDS: Sure.

3 (Whereupon, a discussion was held off the
4 record.)

5 Q (By Mr. Richards) Have you figured the 03:45
6 incidents of resistance in detentions versus the
7 total number?

8 A Yes, sir. What I have is based on the CIRS
9 reports that I have in my possession, which is 69
10 shoplifting apprehension reports. 03:45

11 Q And that's for the entire period you
12 mentioned?

13 A Yes, sir.

14 Q Okay.

15 A Out of that 69, 25 resisted the apprehension, 03:45
16 and within that number, I want to say about five
17 were simply handcuffed because these store personnel
18 felt it was appropriate.

19 Q Five of the 25?

20 A Five of the 25. 03:46

21 Q And what did you consider to be resistance?

22 A That would be what they wrote in their
23 narrative.

24 Q All right. From looking at the narratives,
25 did that include, for instance, attempts to flee? 03:46

1 A Yes.

2 Q So not necessarily an altercation, but someone
3 who is simply trying to get out the door?

4 A I'm not sure I could differentiate between the
5 two. The sole purpose for them to fight with the 03:46
6 loss prevention person is to flee.

7 Q Well, were there -- I guess eliminating the
8 five that were handcuffed just as a prophylactic
9 measure, would the remaining 20 who resisted, did
10 all of those actually result in an altercation 03:47
11 instead as opposed to simply the application of some
12 force to restrain them?

13 MR. DeMURO: Object to the form of the
14 question.

15 A You know, I didn't get that deep into the 03:47
16 narratives to try to understand any kind of
17 differentiation between the two.

18 Q (By Mr. Richards) Now, in looking at that, I
19 take it you're not able to say whether that degree
20 of physical resistance would have been any different 03:47
21 in any other store in that area; is that true?

22 A That is true.

23 Q Do you have any opinions as to whether that is
24 -- and of the 69 apprehensions, and that's over
25 about a four year period; is that right? 03:47

J. PATRICK MURPHY, 4-7-08

152

1 A Probably 2003, and this actually goes through
2 August 5th of 2007.

3 Q Okay.

4 MR. DeMURO: What's the starting date?

5 A March '03. 03:48

6 Q (By Mr. Richards) So about three-and-a-half
7 years?

8 A Yes.

9 Q So in that, let's call it 40 months just to
10 make it easy, in that 40 month period, did that seem 03:48
11 like a high number of apprehensions?

12 A That's why I'm not comfortable with the
13 numbers I have here because I -- that would be a
14 fairly low apprehension rate for a large Target
15 store and -- 03:48

16 Q What would be your expectation of the norm, if
17 you have one?

18 A Not knowing their sales volume and that sort
19 of thing, I couldn't even make a guess.

20 Q Do you have any understanding of the number of 03:49
21 customers that come through that store in the course
22 of a year, say?

23 A No, sir.

24 Q Do you have any perception as to whether the
25 percentage of individuals who resist, as we've 03:49

**TULSA FREELANCE REPORTERS
918-587-2878**

²²
J. PATRICK MURPHY, 4-7-08

155

1 have to look at the circumstance of the detention to
2 say whether or not resistance was something that
3 would appear surprising or inappropriate?

4 A I would look at the percent, and just based on
5 experience and knowledge of what I would consider a 03:52
6 typical large A store retailer, whether that would
7 be high or not.

8 Q And in your opinion, for a large, did you say
9 A store?

10 A A store. 03:52

11 Q What is that?

12 A That's a CIRS term for a high volume mall type
13 of department store.

14 Q And would this store fall within that
15 category? It's not in the mall, but -- 03:53

16 A I don't know what their sales volume is so I
17 don't know.

18 Q For a store of this type, if you can say, and
19 if you can't, that's fine, what percentage would you
20 expect to see? 03:53

21 A I have no way of gauging that.

22 Q All right. So would it also be true that were
23 you to look at or be able to look at data that you
24 felt was accurate, you wouldn't be able to say
25 whether it appeared out of line or not? 03:53

TULSA FREELANCE REPORTERS
918-587-2878

1 A Well, what I would go back to is my own
2 personal experience as to the number of people who
3 resisted apprehension and do some sort of
4 comparative analysis as to what I recall that that
5 number was back when I was making those 03:54
6 apprehensions myself versus this store. You know,
7 there's no finite comparison here. I'd have to look
8 at the data, the specifics of the shoplifting
9 apprehensions, see what was involved in it, but the
10 ultimate number would be a simple percentage. 03:54

11 Q But the basis of comparison for your opinion
12 would be your experience over 10 years in Sears
13 stores in the Houston area; correct?

14 A Yes.

15 Q And there's no other data you have at hand 03:54
16 that you could compare information from this store
17 to, is there?

18 A There is not.

19 Q All right. Now, do you know that those would
20 be comparable comparisons? 03:55

21 A No.

22 Q All right. Have you formed any opinion as to
23 whether the demographics of this store or the
24 neighborhood in which it's located are indicative of
25 a high crime area, a low crime area, medium crime 03:55

1 area, in terms of the volume of people that come
2 through the store and its parking lot?

3 A I did not do any studies of demographics.

4 Q I guess that gets back to the foreseeability
5 issue that you said really wasn't a part of your 03:55
6 opinions in this case?

7 MR. DeMURO: Object to the form of the
8 question, it misstates.

9 A Let me make sure I answer the question
10 properly. The foreseeability aspect of this is 03:56
11 based on the incidents of the store specifically,
12 not in another form of foreseeability based on
13 demographics or crime rate.

14 Q (By Mr. Richards) All right. As you use the
15 term foreseeability, what is it that in your opinion 03:56
16 was foreseeable as regards this incident?

17 A That there is a greater chance that
18 shoplifters are going to resist and/or attempt to
19 flee, so we use those terms interchangeably, than
20 there is that they are compliant. 03:56

21 Q In your opinion, was it foreseeable that in
22 this incident, the suspect would pull a knife and
23 stab people?

24 A Through the incident reports and through the
25 productive merchandise recoveries which occur when 03:57

1 the asset protection staff feels like there is
2 danger because they observe a cutting instrument,
3 usually it's a knife of some sort, this store had a
4 history of knives being involved in shoplifting
5 incidents. Those incidents were not -- for the most 03:57
6 part were handled by the Tulsa Police Department
7 based on a phone call from the store. I did read on
8 two occasions on the reports that I had that the
9 asset protection staff handled them on their own
10 without police assistance. 03:57

11 Q And without incident to the personnel;
12 correct?

13 A I'm sorry?

14 Q And without incident to the personnel?

15 A Correct. 03:58

16 Q Now, when you say knives being used in
17 shoplifting, you're talking about knives being used
18 to cut open packages and things of that nature?

19 A Yes.

20 Q There was never a prior incident of someone 03:58
21 threatening anyone with a knife in this Target
22 store, was there?

23 A There was, but I would have to check the date
24 to see when that occurred.

25 Q And that was not a shoplifting incident, was 03:58

1 it? Wasn't that an occasion of a domestic dispute?

2 A Well, I believe it was a store detective named
3 Jess who had a knife pulled on him.

4 Q You may be correct. I may be misremembering
5 the situation. All right. So prior to this 03:58
6 incident, there was one occasion where a knife may
7 have been brandished?

8 A I believe that's correct.

9 Q And no injuries from that incident?

10 A Correct. 03:59

11 Q What happened in that incident? Did the asset
12 protection person back off?

13 A Yes.

14 Q And let the suspect go?

15 A Correct. 03:59

16 Q Based upon that, is it your testimony that it
17 was foreseeable in this incident that either Mr.
18 Pavey or Mr. Therrien or both would be stabbed?

19 A It's my opinion that based on the history of
20 the knives and the resisting arrest, that the 03:59
21 incident itself, A, that there was resisting that
22 took place within the context of the apprehension,
23 and B, that there was a knife involved, that those
24 two facets were foreseeable, and based on that
25 foreseeability, they didn't have enough staff on 04:00

1 duty to mitigate that possibility.

2 Q But the knife was not displayed until the
3 detention was in progress; correct?

4 A Right.

5 Q So that wouldn't indicate foreseeability that 04:00
6 there would be a stabbing; correct? In other words,
7 it wasn't like they saw somebody walking through the
8 store holding up a knife threatening people and then
9 perceived there would be a stabbing?

10 A I don't think foreseeability is as strict as 04:00
11 you're trying to characterize it, if I'm
12 understanding what you're saying. The
13 foreseeability aspects are both the
14 resisting/fleeing aspects, and the fact that there
15 were numerous incidents involving knives or other 04:01
16 cutting instruments being used to open packages. I
17 can't possibly say that anybody foresaw that if a
18 customer got involved in this type of altercation on
19 this type of day with these circumstances, this
20 would happen, that's just not in the realm of 04:01
21 possibility.

22 Q And it's also true, isn't it, that in this
23 incident, the suspect was never observed opening the
24 packages of the items he ultimately stole using a
25 knife; in other words, the knife was never seen in 04:01

1 his possession before he pulled it out and stabbed
2 Stacie Pavey and Mr. Therrien?

3 A Correct.

4 Q So there was no indicator to the asset
5 protection personnel that this particular individual 04:01
6 had a knife; is that correct?

7 MR. DeMURO: Object to the form.

8 A That is correct.

9 Q (By Mr. Richards) All right. And is it
10 equally fair to say that there would be no more 04:02
11 reason to believe that this suspect would pull out a
12 knife and stab someone than there would be that any
13 other suspect being stopped for shoplifting would
14 pull out a knife and stab someone?

15 : MR. DeMURO: Object to the form. 04:02

16 A The approach that should be taken is that
17 there's a high possibility that everybody who is
18 shoplifting has access to some sort of weapon, be it
19 keys or knives or whatever. So I'm not sure I can
20 answer that question properly for you. 04:02

21 Q (By Mr. Richards) All right. Let me see if I
22 can get us to agree on this. Would you agree that
23 as Mr. Pavey was approaching to make this detention,
24 that it was not predictable that this individual
25 would stab anyone? 04:03

1 MR. DeMURO: Object to the form of the
2 question.

3 A Based on the numbers that we have, I think it
4 was more likely to be predictable than it was not.

5 Q (By Mr. Richards) So it was more probable 04:03
6 that Mr. Pavey would be stabbed in making this
7 apprehension than that he would not be stabbed?

8 A Yes.

9 Q And that's because of the history of knives
10 being used to open packages in shoplifting incidents 04:03
11 at this store?

12 A And the prior instance where there was a knife
13 brandished on a shoplifting incident.

14 Q With Jess?

15 A Yes. 04:03

16 Q And are there any other factors that lead you
17 to that opinion that it was more probable than not
18 that he would be stabbed than most?

19 A Not at this time.

20 Q Is that really what this first opinion goes to 04:04
21 is that the significant experience in apprehension
22 of shoplifters and specific knowledge of prior
23 occasions or injuries that occurred should have led
24 Target to recognize that this was a foreseeable
25 circumstance? 04:04

1 Q Are there any opinions that you intend to
2 offer at the time of trial that we haven't talked
3 about?

4 A Not at this time.

5 Q Are there any bases for the opinions that 05:22
6 we've talked about or that you intend to offer at
7 trial that we haven't discussed?

8 A Not at this time.

9 Q Can you think of anything that I haven't asked
10 you that if you were in my seat you'd ask? 05:22

11 MR. DeMURO: Object to the form of the
12 question, inappropriate, compound.

13 A I think we've discussed everything at this
14 point in time.

15 MR. RICHARDS: All right. That being the 05:22
16 case, I'll pass the witness.

17 MR. DeMURO: No questions.

18 (Whereupon, a discussion was held off the
19 record.)

20 MR. DeMURO: We'll waive. 05:23

21 (Whereupon, the witness waived signature
22 and the deposition was concluded at 5:23 p.m.)
23
24
25

05:23

COUNTY OF TULSA)

I further certify that the foregoing 214 05:23
pages contain a full, true and correct transcript of
the deposition taken at such time and place.

I further certify that I am not attorney
for or relative to either of said parties, or
otherwise interested in the event of said action. 05:23

WITNESS MY HAND this day of April,
2008.

KARLA E. BARROW, CSR
CSR No. 00113

TULSA FREELANCE REPORTERS
918-587-2878